

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7963 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SUKHABHAI M DAMOR

Appearance:

MR HARDIK C RAWAL for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/09/1999

ORAL JUDGEMENT

Learned Advocate Mr.Raval is appearing for the petitioner Corporation. Though served, the respondent workman has not appeared before this Court. The respondent herein was working as a Conductor in Radhanpur Depot, Palanpur Division. While working as such, on 30.5.1980, he was on route from Varahi to

Chhaniadhar, it was found that the respondent had collected fare from three passengers travelling from Varahi to Gotira and had not issued tickets in their favour till the checking point. Similarly, in respect of two passengers travelling from Varahi to Chani, the respondent had collected fare but had not issued tickets to them. The Departmental Inquiry was initiated against the respondent for the said misconduct. During the course of departmental inquiry, it was the case of the respondent that he was not well and therefore he could not issue tickets to those passengers from whom he had recovered the fare. At the end of the departmental inquiry, the respondent was dismissed from service vide order dated 3rd December, 1980, which action of the petitioner Corporation was challenged by the respondent workman before the Labour Court by filing reference No. 846 of 1984. The Labour Court, Ahmedabad under its impugned award dated 12th April, 1988, set aside the order of dismissal directing the petitioner Corporation to reinstate the respondent with continuity of service but without backwages. Feeling aggrieved, the petitioner Corporation has challenged the same before this Court by filing the present petition under Article 227 of the Constitution of India.

Learned Advocate Mr. Raval appearing for the petitioner Corporation, has submitted that the Labour Court has erred in directing the resintatement of the respondent. According to him, since the respondent had admitted the guilt some punishment ought to have been imposed upon the respondent while directing his reinstatement in service. He has further submitted that the Labour Court has erred in not imposing any punishment and therefore, this Court should interfere with the impugned award in this petition.

In Para 19 of the award, the Labour Court has in terms observed that the respondent has committed serious misconduct by misappropriating an amount of Rs.3.05 ps. while working as a Conductor. In past also, he has committed similar type of misconduct. However, the Labour Court found that the impugned order of dismissal is harsh, unjustified and disproportionate to the guilt established against the respondent workman and therefore, while exercising the powers under Section 11-A of the Industrial Disputes Act, the Labour Court set aside the impugned order of punishment and directed reinstatement of the workman, ofcourse without backwages. Before the Labour Court, the respondent workman has not challenged the legality and validity of the departmental inquiry and the petitioner Corporation has not led oral evidence.

Before the Labour Court, the respondent workman has deposed that he remained unemployed during the intervening period and the petitioner Corporation has failed to prove his gainful employment. However, without taking into consideration, an act of misconduct committed by the respondent, the Labour Court directed reinstatement of the workman. The Labour Court also ignored the past record of the workman. I am of the opinion that looking to the past record, as per page 17 of the petition, some more punishment is required to be imposed upon the respondent over and above the denial of backwages. I am of the opinion that it would be just and proper if three annual increments of the respondent workman are ordered to be stopped with cumulative effect. The impugned award passed by the Labour Court is required to be modified to that extent. In so far as the reinstatement is concerned, the same does not call for any interference and that part of the award shall remain intact.

In the above premises, this petition is partly allowed. The petitioner Corporation is directed to stop three annual increments of the respondent workman with cumulative effect from 1.1.1999. The award passed by the Labour Court, shall stand modified to the above extent. Rule is made absolute accordingly with no order as to costs.

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